

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re

SPOKANE RACEWAY PARK,
INC.,

Debtor.

John D. Munding, in his capacity at Chapter 11 Trustee and on behalf of Spokane Raceway Park, Inc., as Debtor,

Appellee,

V.

ORVILLE MOE, an Individual,

Appellant.

NO. CV-10-066-RHW

ORDER DENYING APPELLEE'S MOTION TO DISMISS APPEAL

Before the Court is Appellee's Motion to Dismiss Appeal and Motion to Expedite Hearing re: Same (Ct. Rec. 13). This motion was heard on an expedited basis without oral argument. Appellant previously sought and obtained an extension of time to file a designation of the record and statement of issues in the above-captioned matter (Ct. Rec. 10). Appellee argues that Appellant was required to file an opening brief on or before June 16, 2010, yet as of the date of the Motion to Dismiss (July 19, 2010), Appellant had failed to do so. Appellant's response cites to several other bankruptcy appeals currently pending before other judges in this District. Appellant concedes that he failed to file his brief by the deadline, but argues that he has been awaiting a ruling in another matter.

Despite knowing that his opening brief was past due, and knowing that

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1 Appellee has moved for dismissal on that basis, Appellant has failed to file his
2 opening brief for more than two months beyond the deadline. Appellant has failed
3 to even seek an extension of time to file the brief. Nonetheless, the Court finds that
4 these circumstances are not so egregious as to require dismissal without
5 exploration of less drastic sanctions. *See, e.g., In re Morrissey*, 349 F.3d 1187,
6 1190-91 (9th Cir. 2003). Therefore, the Court will allow Appellant a brief
7 additional extension to file his brief by the deadline set forth below.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Appellee's Motion to Dismiss Appeal and Motion to Expedite Hearing
10 re: Same (Ct. Rec. 13) is **DENIED**.

11 2. Appellant shall file his opening brief on or before **August 27, 2010**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
13 Order and forward copies to counsel.

14 **DATED** this 19th day of August, 2010.

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16 *s/Robert H. Whaley*
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United States District Judge
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